

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN J. MCCARTHY,	:	
Petitioner	:	
vs.	:	CIVIL NO. 1:CV-10-1609
WARDEN, USP LEWISBURG,	:	
Respondent	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering the Report and Recommendation of the magistrate judge recommending we dismiss without prejudice petitioner John J. McCarthy's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 because his claims are not cognizable under a habeas petition. McCarthy objects to the report arguing that the magistrate judge erred when applying the applicable case law. Since objections were filed, the Court must "make a *de novo* determination of those portions of the report or specified proposed finding or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(c).

We are not convinced by petitioner's argument. The magistrate judge correctly applied *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 243 (3d Cir. 2005) when he concluded that petitioner's claims were inappropriate under § 2241. Petitioner's petition pleads claims that concern the conditions of his confinement which are within the scope of a *Bivens* action.

ACCORDINGLY, this 2nd day of December, 2010, it is ordered that upon consideration of the report and recommendation of the magistrate judge (doc. 11), filed October 20, 2010, to which objections were filed, and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted.
2. Petitioner's objection (doc. 12) is overruled.
3. Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is dismissed without prejudice.
4. The Clerk of Court shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge